

United States
Circuit Court of Appeals

For the Ninth Circuit.

ESTATE OF WINIFRED H. KINNEY, De-
ceased, by SHERWOOD KINNEY and R. C.
GORTNER, Executors,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of the Record

Upon Petition to Review an Order of the United States
Board of Tax Appeals.

FILED

NOV 23 1934

PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

R. T. GORTNER, Esq.

For Respondent:

W. F. GIBBS, Esq.,

T. M. MATHER, Esq.

Docket No. 49582

ESTATE OF WINIFRED H. KINNEY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1930

July 16—Petition received and filed. (1) (Fee not paid.)

July 23—Fee paid (check).

Aug. 15—Order to show cause on or before Sept. 10, 1930, entered. (Imperfect.)

Sept. 5—Amended petition filed by taxpayer.

Sept. 8—Copy of petition served on G. C.

Sept. 10—Hearing had on order to show cause, vacated. Amended petition received.

Sept. 10—Order that order to show cause be vacated, amended petition be served, respondent given 60 days to answer or forty-five days to move in respect thereto, entered.

1930

Sept. 17—Copy of petition served on G. C.

Oct. 28—Answer filed by G. C.

Oct. 30—Copy served on taxpayer, assigned to Circuit Calendar.

1933

Aug. 2—Hearing set week 9/11/33 at Long Beach, California.

Sept. 18—Called 9/11/33. Hearing had before Hon. W. C. Lansdon, Div. 8. Submitted on merits. Stipulation of facts with exhibits attached filed. Briefs due 11/20/33.

Nov. 10—Brief filed by taxpayer.

Oct. 31—Transcript of hearing 9/18/33 filed.

1934

May 1—Opinion rendered. W. C. Lansdon, Div. 8. Decision will be entered for respondent.

May 5—Decision entered. W. C. Lansdon, Div. 8.

July 30—Petition for review by U. S. Circuit Court of Appeals, 9, with assignments of error filed by taxpayer.

Aug. 23—Proof of service filed by taxpayer.

Sept. 7—Praecipe with proof of service thereon filed.

Sept. 26—Order enlarging time to October 15, 1934, for transmission of record entered [1*]

In the Matter of the Estate of Winifred H. Kinney,
Deceased.

Date of Death, December 6th, 1927.

MT-ET-C1.-4068-REW.

District of 6th California.

*Page numbering appearing at the foot of page of original certified Transcript of Record.

PETITION TO THE U. S. BOARD OF TAX
APPEALS FOR REDETERMINATION OF
DEFICIENCY.

To the Honorable United States Board
of Tax Appeals,
Earle Building,
Washington, D. C.

The undersigned, executors of the Estate of Winifred H. Kinney, deceased, hereby petition your Honorable Body for a redetermination of the deficiency in the above entitled proceeding.

By letter of May 27th, 1930, from the Honorable Commissioner of Internal Revenue, entitled as above set forth, to these executors, the deficiency in Federal Estate Tax was determined in the amount of \$3,968.07, and was explained in a statement attached to said letter consisting of one page.

The undersigned executors do not acquiesce in said determination, but petition hereby for a redetermination of said deficiency.

The deceased Winifred H. Kinney, whose death occurred on December 6th, 1927, was the beneficiary of a trust created by Abbot Kinney on October 28th, 1918, the term of which trust was during the life of said Abbot Kinney and for twelve years after his death. A copy of the trust declaration has been heretofore filed by the undersigned.

Said declaration of trust provided only for a sharing in the income of the trust estate by the said beneficiary during her life. It did not vest any interest in the corpus of the trust in her. It provided

that at the termination of the trust, and then only, the corpus of the trust property should be divided among the beneficiaries of said trust. It did not provide for any division of the corpus of the trust before the final termination of the trust and it did not provide for any allotment of any part of the trust estate, or of its income, to any successors of any beneficiary in the event of his or her death.

Upon the death of Winifred H. Kinney her right to income from said trust did not pass to anyone as her successor, but ceased. Likewise, no interest in the trust estate having vested in her, no share in the corpus passed from her by inheritance to her children, Clan Kinney and Helen Kinney, but the whole of the corpus remained under the trust for distribution at the termination of the trust among the then existing beneficiaries.

Incomplete. [2]

Abbot Kinney died in 1920; hence the termination of said trust will occur in 1932. Therefore there was no interest in the corpus of the trust estate in Winifred H. Kinney when she died in 1927.

Notwithstanding this a tax has been imposed as if she were during her life the owner of one-ninth of the trust fund. To this the undersigned executors object and protest and ask that said entire tax be annulled and cancelled.

If, however, it be held that Winifred H. Kinney was the owner of one-ninth of the beneficial interest in the trust fund itself, then the undersigned executors object to the valuation fixed for said one-ninth. The entire trust fund consisted of capital stock of

Abbot Kinney Company. The net value of the Abbot Kinney Company and its assets has been properly ascertained and we have no quarrel therewith. A free one-ninth of said assets would be the amount fixed by the Commissioner of Internal Revenue, to-wit, \$182,269.14.

But said one-ninth was not a free stockholding. It was not in the possession of the deceased, nor issued in her name. She had no individual rights over it, nor could she sell it or transfer it to anyone. It was not receivable by her until 1932, but was bound to remain until that date impounded in a trust, in which she had no separate or severable ownership.

The valuation of this one-ninth was therefore not a full value of a one-ninth of said trust property, freed from the encumbrances and impairment of said trust, but was some lesser value. The undersigned have submitted evidence that this value would not exceed one-half of the value fixed by the Government officers.

The Honorable Commissioner's letter of May 27th, 1930, with the explanatory sheet thereto attached, apparently recognizes this argument but offsets it by the theory that the trust estate would be augmented by the addition of earnings up to 1932 "sufficient to negative the propriety of discounting it to find its present worth as of the date of the decedent's death." This consideration is improper in fixing the value of the deceased's interest at the time of her death. The income that that interest may

have earned for others thereafter has nothing to do with its proper valuation at her death. For all that appears it may have resulted in losses in the subsequent years, and may yield no income whatsoever; and to assume an increase of value up to the present time or in the next two years is assuming something for which there is no proof and which is for the future problematical.

The undersigned respectfully request that they may be given such opportunity as the rules of the Department provide for further presentation of evidence or argument.

Dated this July 11th, 1930.

Very respectfully,

R. C. GORTNER

SHERWOOD KINNEY

Executors of the Estate of

Winifred H. Kinney, Deceased.

701 Pershing Square Building,

Los Angeles, California.

R. C. GORTNER

Attorney for said Executors.

[Endorsed]: United States Board of Tax Appeals.
Filed Jul. 16, 1930. [3]

United States Board of Tax Appeals

Docket No. 49582

ESTATE OF WINIFRED H. KINNEY,

Deceased,

By Sherwood Kinney and R. C. Gortner,

Executors,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

Now comes said estate of Winifred H. Kinney, deceased, by Sherwood Kinney and R. C. Gortner, executors of said estate, and represents to this Honorable Board:

A. That Winifred H. Kinney, deceased, died on December 6th, 1927, in the County of Los Angeles, State of California, being a resident of said county and state; and that thereupon the undersigned, Sherwood Kinney and R. C. Gortner, were duly appointed and qualified as executors of the estate of said Winifred H. Kinney, deceased, in proceedings duly had therefor in the Superior Court of the State of California in and for the County of Los Angeles; and are still such executors.

B. That such proceedings were thereupon had that on, to-wit, May 27th, 1930, the Honorable Commissioner of Internal Revenue, respondent herein,

did determine a deficiency in Federal estate tax to exist against petitioner, in the amount of \$3968.07, and did address to and serve upon petitioner a letter of date May 27th, 1930, (a copy of which is hereto appended) notifying petitioner of such determination and of the right of petitioner to file a petition with the United States Board of Tax Appeals for a redetermination of said deficiency.

C. That thereupon on July 11th, 1930, petitioner did transmit to said United States Board of Tax Appeals its petition for redetermination of said deficiency, which was thereupon on July 17th, 1930, duly docketed under the caption and with the docket number hereinabove set forth. [4]

D. That thereupon on August 15th, 1930, order to show cause was duly served upon petitioner, requiring petitioner to prepare and file an original and four copies of a proper petition in accordance with the Board's rules of practice in the above entitled matter; wherefore this petition is now made and filed.

E. The amount of said deficiency is \$3968.07; and the nature of the tax is a Federal estate tax, imposed upon the estate of Winifred H. Kinney, deceased, who died December 6th, 1927; and the amount thereof in controversy is the whole of said tax.

F. The Honorable Commissioner of Internal Revenue committed error in determining said deficiency, as follows:

1. There was no property right vested in said Winifred H. Kinney at the time of her death, in

or to any part of the capital stock of Abbot Kinney Company, a corporation; and the Honorable Commissioner erred in holding that she was vested with a one-ninth interest in said stock.

2. If said Winifred H. Kinney was at the time of her death vested with a one-ninth interest in the capital stock of Abbot Kinney Company, a corporation, then her interest therein was subject to a trust, and was not receivable by her or her estate until 1932; and was not equivalent in value to one-ninth of the assets of said corporation. Her interest and that of her estate upon her death, if any, in said stock, was impaired in value by the terms of said trust, so that the true valuation thereof did not exceed one-fourth of the valuation erroneously fixed by the Honorable Commissioner of Internal Revenue.

G. The facts upon which petitioner relies as sustaining the foregoing assignments of error are as follows:

1. The deceased Winifred H. Kinney, whose death occurred on December 6th, 1927, was the beneficiary of a trust created by Abbot Kinney on October 28th, 1918, the term of which trust was during the life of said Abbot Kinney and for twelve years after his death.

2. Said declaration of trust provided only for a sharing in the income of the trust estate by the said beneficiary during her life. It did not vest any interest in the corpus of the trust in her. It provided that at the termination of the trust, and

then only, the corpus of the trust property should be divided among the beneficiaries of said trust. It did not provide for any division of the corpus of the trust before the final termination of the trust and it did not provide for any allotment of any part of the trust estate, or of its income, to any successors of [5] any beneficiary in the event of his or her death.

3. Upon the death of Winifred H. Kinney her right to income from said trust did not pass to anyone as her successor, but ceased. Likewise, no interest in the trust estate having vested in her, no share in the corpus passed from her by inheritance to her children, Clan Kinney and Helen Kinney, but the whole of the corpus remained under the trust for distribution at the termination of the trust among the then existing beneficiaries.

4. Abbot Kinney died in 1920; hence the termination of said trust will occur in 1932. Therefore there was no interest in the corpus of the trust estate in Winifred H. Kinney when she died in 1927.

5. If, however, it be held that Winifred H. Kinney was the owner of one-ninth of the beneficial interest in the trust fund itself, then the undersigned executors object to the valuation fixed for said one-ninth. The entire trust fund consisted of capital stock of Abbot Kinney Company. The net value of the Abbot Kinney Company and its assets has been properly ascertained and we have no quarrel therewith. A free one-ninth of said assets

would be the amount fixed by the Commissioner of Internal Revenue, to-wit, \$182,269.14.

6. But said one-ninth was not a free stockholding. It was not in the possession of the deceased, nor issued in her name. She had no individual rights over it, nor could she sell it or transfer it to anyone. It was not receivable by her until 1932, but was bound to remain until that date impounded in a trust, in which she had no separate or severable ownership.

7. The valuation of this one-ninth was therefore not a full value of a one-ninth of said trust property, freed from the encumbrances and impairment of said trust, but was some lesser value.

H. Wherefore petitioner by the executors aforesaid, does pray that the said tax: First, be cancelled in its entirety; or, second, reduced to one-fourth of the amount fixed by said Honorable Commissioner.

ESTATE OF WINIFRED H. KINNEY,
Deceased.

By SHERWOOD KINNEY

By R. C. GORTNER

Executors of the estate of Winifred H.
Kinney, deceased.

Address:

701 Pershing Square Building,
Los Angeles, California. [6]

State of California,
County of Los Angeles.—ss.

R. C. GORTNER, being first duly sworn, on oath deposes and says:

That he is one of the executors of the estate of Winifred H. Kinney, deceased, and that he makes the foregoing petition and this verification thereof for and on behalf of said estate and for and on behalf of Sherwood Kinney, his co-executor; that affiant knows the matters and things set forth in the foregoing petition and that the same are true of his own knowledge except as to the matters therein stated on information and belief and that as to said matters he believes it to be true.

R. C. GORTNER.

Subscribed and sworn to before me this 3rd day of September, 1930.

[Seal]

H. J. GWARTNEY

Notary Public in and for the County of Los Angeles, State of California. [7]

Treasury Department
Washington

Office of

Commissioner of Internal Revenue

MT-ET-Cl.-4068-REW

May 27, 1930

District of 6th California

Estate of Winifred H. Kinney

Date of death—December 6, 1927

Sherwood Kinney, et al., Executors,

Estate of Winifred H. Kinney,

Venice, California.

Sirs:

The Bureau has examined the protest filed on behalf of the above-named estate against the tentative findings set forth in the letter addressed to the executor by this office under date of April 11, 1930. The deficiency in Federal estate tax hereby determined amounts to \$3,968.07, and is fully explained in the attached statement, consisting of one page, showing the action of the Bureau with respect to the protest.

In accordance with the provisions of Title III of the Revenue Act of 1926, you are allowed sixty days from the date of the mailing of this letter (not counting Sunday as the sixtieth day) within which to file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency. Any such petition must be addressed to the United States Board of Tax Appeals, Earle Building, Washington, D. C., and must be mailed in time to reach the said Board within the 60-day period prescribed.

Where a taxpayer has been given an opportunity to file a petition with the United States Board of Tax Appeals and has not done so within the 60 days prescribed, and an assessment has been made, or where a taxpayer has filed a petition and an assessment in accordance with the decision, which has become final, has been made, the unpaid amount of such assessment must be paid upon notice and demand from the Collector of Internal Revenue. No claim for abatement can be entertained.

If you acquiesce in this determination and do not desire to file a petition with the United States Board of Tax Appeals, you are requested to execute the enclosed Form 890, waiving (1) your right to file a petition with the United States Board of Tax Appeals and (2) the restrictions on the assessment and collection of such deficiency, and to forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of the Estate Tax Division, Miscellaneous Tax Unit. In the event that you acquiesce in only a part of the determination, the enclosed form of waiver should be executed with respect to the amount of the deficiency to which you agree.

Respectfully,
ROBT. H. LUCAS,
Commissioner.

Enclosures:

Statement,

Waiver—Form 890

md [8]

Treasury Department
Internal Revenue Service
Form 890—Revised Jan. 1929
(886M)

WAIVER OF RIGHT TO FILE PETITION WITH THE UNITED STATES BOARD OF TAX APPEALS AND CONSENT TO ASSESSMENT AND COLLECTION OF DEFICIENCY IN ESTATE TAX.

Note: When executed, this waiver will not extend the statute of limitations for refund or assessment of tax, nor will it be an agreement under the provisions of Section 606 of the Revenue Act of 1928.

To the Commissioner of Internal Revenue,
Washington, D. C.

Attention: (Miscellaneous Tax Unit,
(Estate Tax Division.

The undersigned executor of the estate of Winifred H. Kinney waives his right to file a petition with the United States Board of Tax Appeals for a redetermination of \$..... (*deficiency) (*of the deficiency) disclosed by the letter from the Commissioner of Internal Revenue, Washington, D.C., dated May 27, 1930, and bearing the symbols 4068-6th Calif. and consents to the immediate assessment and collection of the amount set forth above.

Signed Date.....

Executor

Street..... City..... State.....

*Strike out words not applicable. [9]

MT-ET-CI-4068-REW-6th California
Estate of Winifred H. Kinney.

The protest relates to the following item:

Gross Estate

Other

Miscellaneous	Tentatively		
Property	Returned	Determined	Determined
One-ninth interest in trust created by decedent's hus- Abbot Kinney, dated October 28, 1918	\$ 0.00	\$201,567.10	\$201,567.10

It is claimed that since the decedent had no vested interest in the corpus but only a life interest in one-ninth of the income earned by the trust created October 28, 1918, she had no interest of value taxable for Federal estate tax purposes; and that even if a value arising out of the trust is held to have been transferred by reason of the death of the decedent, such value is not fairly represented by one-ninth of the fair market value of the corpus of the trust but rather this value discounted by at least 50 per centum to reflect the impairment incident to the trust status.

However, the death of the decedent freed the income from one-ninth of the corpus so that it

might be added to the principal of the trust. This income became part of the corpus to be distributed at the termination of the trust not later than 1932; and as part of the corpus this interest so included earned income sufficient to negative the propriety of discounting it to find its present worth as of the date of the decedent's death. It appears, therefore, that the value of the income in which the decedent's interest terminated at the date of her death was equivalent to a capitalization thereof sufficient to maintain the value of her fractional interest in the corpus of the trust. Section 302 of the Revenue Act of 1926 does not contemplate the destruction of property values by subjecting them to a trust status.

The foregoing determination results in the following Federal estate tax liability:

Gross estate	\$189,402.22	\$393,269.32	\$393,269.32
Deductions	221,118.93	211,000.18	211,000.18
	<hr/>	<hr/>	<hr/>
Net estate	0.00	182,269.14	182,269.14
Correct tax determined			3,968.07
Tax shown on the return			0.00
			<hr/>
Deficiency			3,968.07
Credit for State inheritance tax			934.86
			<hr/>
Amount proposed for assessment			3,033.21

The amount proposed for assessment bears interest at the rate of six per centum per annum from one year after decedent's death to the date of assess-

ment, or to the thirtieth day after the filing of a waiver of the restrictions on the assessment, whichever is the earlier.

The instrument signed December 26, 1929, has not been accepted as a waiver in that it is conditional in its terms and fails to specify a definite amount. [10]

Amended Petition Appeal Filed 7-16-30.

[Endorsed]: United States Board of Tax Appeals. Filed Sep. 5, 1930.

[Title of Court and Cause.]

ANSWER.

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, in answer to the petition of the above-named taxpayer, admits and denies as follows:

A. Admits the allegations contained in the paragraph of the petition marked A.

B. Admits the allegations contained in the paragraph of the petition marked B.

C. Admits the allegations contained in the paragraph of the petition marked C.

D. Admits the allegations contained in the paragraph of the petition marked D.

E. Admits the allegations contained in the paragraph of the petition marked E.

F. Denies that the determination of the deficiency tax is based upon errors as alleged in the paragraph of the petition marked F. [11]

G. 1. Admits the allegations contained in subparagraph 1 of the paragraph of the petition marked G.

2, 3, 4, 5, 6, and 7. Denies the allegations contained in subparagraphs 2, 3, 4, 5, 6, and 7 of the paragraph of the petition marked G.

H. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is respectfully prayed that the determination of the Commissioner be approved.

(Signed) C. M. CHAREST,

General Counsel,

Bureau of Internal Revenue.

Of Counsel:

LEWIS S. PENDLETON,

Special Attorney,

Bureau of Internal Revenue.

EGS/lmb-10/21/30

[Endorsed]: United States Board of Tax Appeals.
Filed Oct. 28, 1930. [12]

[Title of Court and Cause.]

STIPULATION OF FACTS.

It is hereby stipulated and agreed by and between the parties thru their respective counsel that the following facts may be considered as true:

1. Winifred Harwell Kinney, the decedent, died testate on December 6, 1927, a resident of Santa

Monica, Los Angeles County, State of California, leaving two children, Clan Kinney and Helen Kinney, surviving her. Thornton Kinney, Carleton Kinney, Sherwood Kinney and Innes Kinney are the children of Mr. Abbot Kinney, by a prior marriage. Mrs. Kinney's death occurred more than seven years after that of her husband, Abbot Kinney, who died in November 1920. The last will and testament of Winifred Harwell Kinney was duly admitted to probate by the Superior Court of Los Angeles County, California, and the executors therein named qualified as such.

2. In the Federal estate tax return filed by the petitioners no reference was made to a one-ninth interest in a revocable trust created by Abbot Kinney on the 28th day of October 1918. This trust was created for the purpose of holding the capital stock of the Abbot Kinney Company for a period of 12 years subsequent to the creation of the [13] trust. The trust indenture is in words and figures as follows:

“(1) This Indenture, made this 28th day of October, 1918, Witnesseth:

(2) That Abbot Kinney of Los Angeles County, California, herein designated the trustee, does hereby covenant and declare that he has and holds the legal title to the following described property in trust for the uses and purposes hereinafter expressed, to-wit:

(3) All shares of stock owned by and all shares standing in the name of Abbot Kinney

on the books of the company in the Abbot Kinney Company, a corporation, organized under the laws of California, and which said title and ownership of shares includes all shares heretofore issued by said company, except three (3) shares.

(4) That said trustee shall have the power to sell, transfer, convey and mortgage all or any of said property, and to receive the rents and profits from said property, and as incidental thereto to manage said property and vote all shares of stock, and to pay and apply said rents and profits for the support and maintenance of the following named persons, in the proportions hereinafter stated, to-wit:

(5) To Thornton Kinney one-sixth ($1/6$); to Sherwood Kinney one-sixth ($1/6$); to Innes Kinney one-sixth ($1/6$); to Carleton Kinney one-sixth ($1/6$); to Winifred H. Kinney for the support and maintenance of herself, and for the support and maintenance of the two minor children of Abbot Kinney, to wit: Helen Kinney and Clan Kinney, to be controlled and applied by said Winifred H. Kinney, one-third ($1/3$); provided however that during the life of Abbot Kinney, trustee above named, he shall act as the sole trustee under this declaration of trust, and he being the sole trustor and maker of this trust shall have the power to revoke this trust at any time during his life time, and during his life time he reserves and shall have the right

to receive and to apply one-half of all the rents, income and profits from the property above described for his sole use as he may determine. In case of the death, absence or inability to act of said Abbot Kinney, trustee, such vacancy shall be filled by a board of directors composed of the following named persons, by proper transfers [14] and declarations of trust: Thornton Kinney; Winifred H. Kinney; Sherwood Kinney; Innes Kinney and Carleton Kinney, and in case of death, absence or inability to act of either or any of said five, then such vacancy shall be filled by Clan Kinney and Helen Kinney in the order named, and all such trustees, in turn, shall have and be possessed of all the power under this trust hereinbefore mentioned.

(6) After the death, absence or inability to act of said Abbot Kinney, said board of trustees in all matters may act by a majority thereof with same effect as if all had acted. This trust shall endure for the period of twelve (12) years after the death of said Abbot Kinney, provided that in case of the death of all of the natural persons in being named in this instrument prior to said time, then this trust shall terminate upon said deaths, but shall be effective from date hereof.

(7) Upon the termination of this trust, unless revoked, the title to the whole of said property, so held in trust, shall immediately vest in the above named beneficiaries by title absolute,

in the same proportions above named for rents and profits and the said one-third (1/3) above set forth for the support of Winifred H. Kinney, Helen Kinney and Clan Kinney, will pass to them in equal shares by absolute title.

(8) This trust shall apply equally to all property exchanged or substituted for any of the above-described property with like effect as if particularly described herein.

(9) The beneficiaries under this trust shall not be personally liable for any incumbrance or indebtedness created by any trustee or trustees.

(10) It shall be the duty of the trustee to make reports each year to the beneficiaries, showing receipts and disbursements and to pay over or apply the rents and profits for the use and benefit of the beneficiaries monthly, provided that in determining the net rents and profits, there shall be reserved necessary funds for payment of taxes, assessments, charges and maintenance and repairs.

(11) Winifred H. Kinney, wife of said Abbot Kinney, hereby joins in this instrument, and hereby declares that all of [15] said property transferred in trust as aforesaid is the separate property and estate of said Abbot Kinney, subject to his disposition and control, and hereby renounces all claims to said property as community property or otherwise, and sets the same apart as the sole property and estate of said Abbot Kinney.

(12) This declaration of Trust supersedes and cancels Declaration of Trust dated November 15th, 1917, and all previous declarations of trust which may have been executed by the said Abbot Kinney.

Witness our hands and seals.

ABBOT KINNEY

WINIFRED H. KINNEY

State of California,
County of Los Angeles.—ss.

On this 28th day of October, in the year nineteen hundred and eighteen A. D. before me, Frank W. Kurten, a Notary Public in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Abbot Kinney and Winifred H. Kinney personally known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said County the day and year in this certificate first above written.

FRANK W. KURTEN,
Notary Public in and for Los Angeles County.
State of California.

My commission expires July 16, 1922."

3. In the deficiency letter, from which this appeal is taken, the Commissioner has determined a value of \$201,567.10 of a 1/9th [16] interest in the trust created by Abbot Kinney on October 28th, 1918, and the value of decedent's gross estate has been increased accordingly.

4. Petitioner contends that the value of decedent's gross estate should be decreased \$201,567.10 on the theory that the trust declaration vested no interest in the corpus of the trust property in any of the beneficiaries thereof until the termination of the trust in 1932.

5. By a codicil to a will executed on October 29, 1927, Mrs. Kinney bequeathed her beneficial interest in the trust to her two children, Clan Kinney and Helen Kinney Gerety.

6. The Abbot Kinney Company is a California corporation. Its general offices are located at Venice, Los Angeles County, Calif., where it at all times material hereto was engaged in the business of selling, purchasing, leasing and operating real estate and summer resort concessions. The capital stock of the corporation being held in trust, no public market for the shares existed.

7. The following is a copy of the balance sheet of the Abbot Kinney Company as of December 6, 1927:

Abbot Kinney Company,
December 6, 1927.

Assets :	Corporate Balance Sheet		
<u>Fixed Assets</u>	\$ 788,023.12		
Land	\$ 912,013.88		\$ 912,031.88
Buildings	180,308.88		180,308.88
Machinery	76,244.34		76,244.34
	1,168,567.10		1,168,567.10
Sub-total	1,168,567.10		1,168,567.10
Less reserve for depreciation	554,192.36	614,374.74	554,192.36
Total Fixed Properties		\$1,402,397.86	
<u>Investments—Stock</u>			[17]
Venice Consumers Water Company	187,600.00		118,379.86
Venice Hotel Corporation	205,500.00		80,000.00
Miscellaneous stock	4,320.00	397,420.00	4,320.00
Sinking Fund For funded debt		11,764.16	
<u>Current assets</u>			
Cash		165,902.32	
Notes receivable		13,713.93	
<u>Accounts receivable</u>			
Sales contracts	\$ 259,545.30		239,545.30
Concessionaries	66,185.77		20,185.77
Stockholders	22,450.00		22,450.00
Miscellaneous	17,715.32	365,896.44	17,715.32
<u>Inventories</u>			
Bath house stock	25,462.91		25,462.91
Stock in shops	8,072.52	33,535.43	8,072.52
<u>Deferred Charges</u>			
Unamortized discount on bonds	66,229.62		0.00
Prepaid insurance	10,997.06	76,226.68	10,997.06
Total assets		2,464,856.82	
Total liabilities		977,512.91	
Net worth—		\$1,487,343.91	

8. The fair market value of the assets of the Abbot Kinney Company on December 6, 1927, was \$2,791,616.84. The total liabilities of the Abbot Kinney Company on December 6, 1927, was \$977,512.91. The net worth of the Abbot Kinney Company on December 6, 1927, was \$1,814,103.93. [18]

9. Under an agreement of sale executed July 1, 1930, Innes Kinney sold a 1/6th beneficial interest in the Abbot Kinney Trust to Carleton Kinney for \$133,000.00. A copy of the agreement of sale is hereto attached and marked Exhibit A.

10. On August 5, 1930, Thornton Kinney sold a 1/6th beneficial interest in the Abbot Kinney Trust to Sherwood Kinney for \$133,000.00. A copy of the agreement of sale is hereto attached and marked Exhibit B.

11. The following is a copy of the corporation's balance sheet as of June 30, 1930:—

<u>Assets:</u>	<u>June 30, 1930.</u>
Land, buildings and equipment	
less reserve for depreciation	\$1,185,855.55
Investments	242,145.31
Current assets	290,155.63
Prepaid charges	17,757.82
	<hr/>
Total assets	\$1,836,546.74

Liabilities.

Mortgage bonds	\$ 348,000.00
Mortgage notes	35,000.00
Other notes	7,000.00
Current liabilities	8,530.14
Capital stock	1,000,000.00
Surplus	438,016.60
	<hr/>
Total liabilities —	\$1,836,546.74
Net worth—	<u>\$1,438,016.60</u>

[19]

12. It is further stipulated and agreed that if Mr. C. C. Hogan, Mr. W. D. Newcomb, Jr., and Mr. Herbert Hertel, were called as witnesses, they would testify as follows:

(a) Mr. C. C. Hogan, Trust Officer, Security-First National Bank of Los Angeles, would testify that in his opinion Mrs. Kinney could not have sold her interest in the trust for more than 50 per cent of the prorata value of 1/9th of the capital stock of the corporation in 1927.

(b) Mr. W. D. Newcomb, Jr., President of the First National Bank, Venice, California, if called as a witness, would testify that the market value of Mrs. Kinney's interest in the trust in 1927 was not in excess of 25 per cent of the fractional net worth of the corporation.

(c) Mr. Herbert Hertel, Manager, Venice Branch, Security-First National Bank of Los Angeles, would testify, if called as a witness, that in his opinion Mrs. Kinney's beneficial interest was

worth 33 and 1/3 per cent of the fractional net worth of the corporation's assets in 1927.

13. It is further stipulated and agreed that this appeal may be submitted for decision upon the foregoing stipulation of facts, no further testimony to be introduced by either party. It is requested that each party be allowed sixty days from September 11, 1933, within which to file briefs.

R. C. GORTNER

Counsel for Petitioner.

E. BARRETT PRETTYMAN

General Counsel

Bureau of Internal Revenue,
Attorney for Respondent. [20]

“EX. A”

AGREEMENT OF SALE AND PURCHASE
BETWEEN INNES KINNEY AND
CARLETON KINNEY.

This Agreement, made and executed in triplicate original as of the first day of July, 1930, by and between Innes Kinney as first party, and Carleton Kinney as second party.

WITNESSETH:

The first party hereby agrees to sell and dispose of his one-sixth (1/6) beneficial interest in, to and under that certain declaration of trust dated October

28, 1918, executed by Abbot Kinney, now deceased, and in and to the shares of stock of Abbot Kinney Company, and in and to all other property constituting a part of the trust estate under said trust, together with any qualifying shares of stock which may stand in his name on the books of the Abbot Kinney Company, a corporation, to the second party and the Abbot Kinney Company, a corporation in proportions and for the consideration herein set forth, and the second party hereby agrees that he and said Abbot Kinney Company will purchase the same in the proportions and for the consideration hereinafter set forth and upon the following terms and conditions:

1. The total purchase price for said one-sixth beneficial interest in said trust and any shares [21] of stock standing in the name of the first party on the books of said Abbot Kinney Company, is the sum of One Hundred Thirty Three Thousand Dollars (\$133,000.00), payable as follows:

Forty-two Thousand Two Hundred Seventeen Dollars (\$42,217.00) by cash, credit and in property as in this instrument set forth, and the balance of Ninety Thousand Seven Hundred Eighty-three Dollars (\$90,783.00), together with interest thereon from July 1, 1930, at five per cent per annum on all portions of said sum of Ninety Thousand Seven Hundred Eighty-three Dollars (\$90,783.00) remaining from time to time unpaid, to be paid by second party in monthly installments of Six Hundred Dollars (\$600.00) per month, including interest (all

payments of such installments to be credited first to unpaid, accrued and earned interest, and the balance to be credited to principal).

2. Twenty-nine Thousand Two Hundred Seventeen Dollars (\$29,217.00) of said Forty-two Thousand Two Hundred Seventeen Dollars (\$42,217.00) is to be paid by cancellation of the indebtedness of first party to Abbot Kinney Company now amounting to Twenty-nine Thousand Two Hundred Seventeen Dollars (\$29,217.00) in return for the transfer and assignment by first party to Abbot Kinney Company of such part of first party's said beneficial interest in said trust and in the said stock of Abbot Kinney Company as Twenty-nine Thousand Two Hundred Seventeen Dollars (\$29,217.00) bears to One Hundred Thirty-three Thousand [22] dollars (\$133,000.00), to-wit: $\frac{29217}{133000}$ part thereof. Such

transfer and assignment is to be executed contemporaneously with the execution of this agreement and the first party by his signature to this agreement acknowledges receipt of the written cancellation and satisfaction of said indebtedness duly executed by said Abbot Kinney Company in full payment for such transfer and assignment.

3. One Thousand Dollars (\$1,000.00) of said Forty-two Thousand Two Hundred Seventeen Dollars (\$42,217.00) is to be paid by cancellation by Sherwood Kinney of the sum of \$1,000.00 which first party agreed to pay Sherwood Kinney for assuming first party's portion of the mortgage indebtedness upon what the parties hereto know as the 16

Park Avenue property in Venice, California. Contemporaneously with the execution of this agreement first party agrees to transfer and assign to Sherwood Kinney $\frac{1}{133}$ part of said beneficial interest of first party in said trust and in the said stock of said Abbot Kinney Company.

4. The balance of said sum of Forty-two Thousand Two Hundred Seventeen Dollars (\$42,217.00) to-wit: Twelve Thousand Dollars (\$12,000.00) is to be paid by said second party to first party as follows: Thirty-eight Hundred Thirty Dollars (\$3830.00) cash; four (4) so-called Abbot Kinney Company bonds of the par value of \$1,000 each due June 1, 1931, together with accrued interest on said bonds from June 1, 1930 to [23] June 1, 1931 at 7% per annum, which said bonds have the agreed value of Four Thousand One Hundred Seventy Dollars (\$4170.00), and an unsecured promissory note in the principal sum of Four Thousand Dollars (\$4,000.00) dated July, 1930, payable on or before two years from date with interest at 7% per annum payable semi annually, signed by the second party in favor of first party, the receipt of which cash, bonds and promissory note from the second party are hereby acknowledged by the first party.

In consideration thereof, first party agrees contemporaneously with the execution of this agreement, to transfer and assign to second party such portion of his beneficial interest in said trust and in the stock of Abbot Kinney Company as \$12,000 bears to \$133,000, to-wit: $\frac{12000}{133000}$ part thereof, and second

party by his signature to this instrument acknowledged receipt of such transfer and assignment.

5. The balance of the purchase price, to-wit, Ninety Thousand Seven Hundred Eighty Three Dollars (\$90,783.00), together with interest thereon from July 1, 1930, at 5% per annum on all portions of said \$90,783.00 remaining from time to time unpaid, is payable and second party agrees to pay same, in monthly installments of \$600.00 per month including interest, as follows: The first installment of \$600.00 is paid herewith, the receipt of which is hereby acknowledged, and subsequent installments are payable on the first day of each and every subsequent month commencing September 1, 1930, subject to the conditions and limitations hereinafter set forth. All payments are to be credited, first to unpaid [24] accrued and earned interest and the remainder thereof to principal. It is expressly understood and agreed that if, while second party is an officer or director of Abbot Kinney Company and holds not less than the amount of stock in the Abbot Kinney Company which he now owns directly or indirectly, Abbot Kinney Company suspends or reduces the monthly payments now being made to second party for family and/or personal expenses so that the total amount received by second party from Abbot Kinney Company and/or its subsidiaries, from all sources, including dividends (now aggregating \$500.00 per month) is reduced below \$500.00 per month, then during the period that the aggregate of said items is below \$500.00 per month the said monthly payments of \$600.00 are also to be reduced in the same proportion; provided however, that if

and while said monthly payments to said second party aggregate less than \$300.00 per month, all monthly payments can be suspended by second party at the option of the second party. In the event that the total payments hereunder to first party for a period of sixty (60) days are less than Three Hundred Thirty Dollars (\$330.00) per month, then either party hereto may terminate this contract by giving a similar thirty (30) day notice to that provided for in paragraph 9 hereof, and with like effect. Anything herein to the contrary notwithstanding no suspension or reduction can be made by second party in the \$600.00 monthly installment in this agreement provided for, up to and including January 1, 1931. The privileges in [25] this agreement granted to second party to suspend or reduce the monthly payments of \$600.00 per month are not to apply to any successor or successors in interest of the second party who are not members of the family of the parties hereto.

6. Contemporaneously with the execution of this agreement, first party agrees to assign and transfer unto Asa V. Call of Los Angeles, California, as trustee $\frac{90783}{133000}$ portion of his beneficial interest in said trust and in the said stock of Abbot Kinney Company (being the proportion of his interest therein that the sum of \$90,783.00 bears to \$133,000.00) to be held by said Asa V. Call upon the following uses and trusts:

(a) To manage the same for the mutual protection of the interests of first party and of second

party under this agreement, and with full and irrevocable power and authority to make assignments, transfers and deliveries of such portion of the beneficial interest of first party in said trust and in the said stock of Abbot Kinney Company as second party may become entitled to from time to time under the terms of this agreement;

(b) To collect and receipt for all dividends and the rents, issues and profits of said beneficial interest or such portion thereof as remains in the hands of said trustee from time to time, and to disburse and apply the same as herein provided. Upon the termination of the trust under said declaration of trust dated October 28, 1918, [26] executed by Abbot Kinney, to receipt for such portion of the trust estate held under said trust as first party may be entitled to thereunder at said time, which he shall hold under the trusts and for the uses and purposes specified herein;

(c) To execute such consents, receipts and any and all other instruments as may in the opinion of said trustee become necessary; to vote and/or instruct the trustees under said trust dated October 28, 1918, executed by Abbot Kinney in the manner that second party may request the said Asa V. Call as trustee to do, but not inconsistent with the provisions of this agreement;

(d) Upon the termination of this trust, to transfer and assign to second party such portion of the trust estate held by said Asa V. Call as trustee as second party may then be entitled to under the pro-

visions of this agreement, and to transfer the remainder unto first party; to exercise any and all other powers which the said Asa V. Call, as trustee, shall deem necessary for the protection of the rights and interests of first party and of second party not inconsistent with the provisions of this agreement and/or any modifications or changes hereof.

(e) Said Asa V. Call, as such trustee, shall not be entitled to compensation for his services as such trustee, but shall be entitled to any costs and expenses incurred by him in administering said trust, including any attorney's fees payable to such attorneys as may be employed by such trustee, which shall be a first lien and charge upon the trust estate in the hands of said trustee and to be paid from time to time with moneys available in said trust. [27]

(f) The Trustee may resign at any time by written notice to both first party and second party. The trustee may be removed only by the joint action of first party and second party executed in writing and delivered to said trustee. Upon the resignation of said trustee or the death of said trustee, or the removal of said trustee, Security-First National Bank of Los Angeles, or such other trustee as may be agreed upon by first party and second party shall be appointed in writing by the joint action of the first party and second party. Such new trustee shall be vested with all the powers and duties and with the property rights herein granted to said Asa V. Call, as trustee, and in addition thereto shall be

entitled to reasonable compensation to be paid by the first party. Said Asa V. Call as trustee, and any successor trustee, shall turn over all portions of the trust estate then remaining in his hands or constituting a part of the trust estate to such new trustee, whereupon, and not before, he shall be released and discharged as trustee hereunder. The provisions hereof shall apply to each successor trustee.

7. At the end of each six months' period, to-wit, on January 1st and July 1st of each year during the life of this agreement, it is expressly understood and agreed that second party shall be entitled to receive and have transferred and assigned to him by the trustee referred to in the preceding paragraph such portion of the present beneficial interest of first party in the trust created by Abbot Kinney as the aggregate of the payments upon prin- [28] cipal resulting from the monthly installments paid on said date and during the preceding six months bears to the sum of \$133,000.00, and the trustee named in the preceding paragraph is hereby irrevocably authorized and instructed to execute such transfers and assignments from time to time as second party becomes entitled thereto under the provisions of this agreement.

8. Second party shall be entitled to receive any and all dividends upon, and the rents, issues and profits of, the beneficial interest of first party in said trust and in said stock of Abbot Kinney Company as may be assigned to said trustee as herein-after provided which may be declared or accrue sub-

sequent to July 1, 1930, during the life of this agreement.

9. In the event that second party shall fail to pay any installment which he is obligated to pay under the terms and conditions hereof, and such failure shall continue for a period of thirty days, first party may, at the option of first party, thirty days after written notice of said default to second party and to the trustee named in paragraph 6 hereof, or any successor of said trustee, said notice to be by mail to the address of second party on file at the office of the trustee and to the trustee at his office, (unless said default has been made good) cancel this agreement as to unpaid for stock or beneficial interest, in which event second party shall be entitled [29] to receive such portion of said beneficial interest of first party in said trust and in the stock of Abbot Kinney Company as the total of the principal of the purchase price then paid by second party hereunder bears to the sum of \$133,000.00 (excluding, of course, such portion thereof as second party may already have received) and second party shall forfeit all interest in the remainder of said beneficial interest, and this contract and trust created hereunder shall thereupon cease and determine.

10. In the event of the death of second party during the life of this agreement the executor and/or administrator of his estate may, within the period of six months after the date of death of sec-

ond party, terminate this agreement by securing, within said six months' period, an order of the court having jurisdiction over the probate proceedings of the estate of second party authorizing such action and serving notice of such termination upon first party, in which event the estate of second party shall be entitled to receive such portion of the said beneficial interest of first party in said trust and in the stock of Abbot Kinney Company as the total of the principal of the purchase price paid by second party hereunder bears to the sum of \$133,000.00 (excluding, of course, such portion of the beneficial interest of first party in said estate and in the stock of Abbot Kinney Company as theretofore has been assigned and transferred by first party to second party. [30]

11. First party agrees to deliver to second party contemporaneously with the execution of this agreement his written resignation as a director and officer of Abbot Kinney Company and of all its subsidiary companies, including Venice Hotel Corporation, in which first party may be a director and/or an officer, together with his written resignation as a trustee under the said trust created by Abbot Kinney under date of October 28, 1918, hereinbefore referred to, and as trustee under any other trusts in which the parties hereto may be interested, which second party is hereby irrevocably authorized to present and have immediately accepted. First party also agrees to deliver to second party contemporaneously with the execution of this agreement

aneously with the execution of this agreement a written release, cancellation and discharge of any and all other agreements between first and second parties, or in which first and second parties are parties, executed prior to July 1, 1930.

12. Subject to the limitations and conditions herein contained, this agreement shall be binding upon the heirs, executors, administrators and assigns of the respective parties hereto.

13. Notwithstanding anything hereinbefore provided in paragraph 8 hereof to the contrary, it is agreed that should said Abbot Kinney Company hereafter sell any of its capital assets, either real or personal [31] and thereafter declare a dividend or dividends, liquidating or otherwise, of the proceeds of such sale or sales, that in the event the payment of such dividend or dividends would reduce the book value of the issued capital stock of Abbot Kinney Company below the sum of \$10.00 per share, then the amount of such dividend so reducing said book value as is declared upon shares of stock in the hands of the trustee, or represented by a distribution on the beneficial interest in the aforesaid trust of said Abbot Kinney, deceased, in the hands of the trustee, shall be paid to the party of the first part to apply upon the unpaid balance of the purchase price due said party of the first part hereunder, interest first and principal second. It is understood, however, that such payments as are provided in this paragraph shall not affect the obliga-

tion of the party of the second part to continue the making of monthly payments to the party of the first part as in this contract provided.

In witness whereof, the parties hereto have hereunto set their hands and seals the day and year first hereinabove written.

INNES KINNEY,

First Party.

CARLETON KINNEY,

Second Party.

I hereby accept the trust provided for in paragraph 6 hereof this 25 day of August, 1930.

ASA V. CALL.

EX. B.

AGREEMENT OF SALE AND PURCHASE
BETWEEN THORNTON KINNEY AND
SHERWOOD KINNEY.

This agreement, made and executed in triplicate original this 5th day of August, 1930, by and between Thornton Kinney as first party and Sherwood Kinney as second party,

Witnesseth:

First party hereby agrees to sell and dispose of his one-sixth beneficial interest in, to and under that certain declaration of trust dated October 28, 1918, executed by Abbot Kinney, now deceased, and in and to the shares of stock of the Abbot Kinney Company, and in and to all other property consti-

tuting a part of the trust estate under said trust, together with any and all shares of the capital stock of Abbot Kinney Company standing of record in the name of first party or owned by first party, to second party, Abbot Kinney Company, Clan Kinney and Helen Kinney Gerety, in the proportions and for the considerations hereinafter set forth, and second party hereby agrees that he and said Abbot Kinney Company, Clan Kinney and Helen Kinney Gerety, will purchase the same in the proportions and for the considerations hereinafter set forth, and upon the following terms and conditions:

O.K. T. K.

S. K.

1. The total purchase price for said one-sixth beneficial interest is the sum of One Hundred thirty-three thousand dollars (\$133,000.00), payable Fifty-one thousand dollars (\$51,000.00) by cash and credit as in this instrument set forth, and the balance of Eighty-two thousand [33] dollars (\$82,000.00), together with interest thereon from July 1, 1930, at five per cent. (5%) per annum on all portions of said \$82,000.00 remaining from time to time unpaid, to be paid by second party in monthly installments at \$600.00 per month including interest (all payments of such installments to be credited first to unpaid accrued and earned interest and the balance to be credited to principal).

2. \$19,388.86 of said \$51,000.00 is to be paid by cancellation of the indebtedness of first party to Abbot Kinney Company now amounting to \$19,-

388.86 in return for the transfer and assignment by first party to Abbot Kinney Company of such part of first party's said beneficial interest in said trust and in the said stock of Abbot Kinney Company as \$19,388.86 bears to \$133,000.00, to wit, $\frac{1,938,886}{13,300,000}$ part thereof. Such transfer and assignment is to be executed contemporaneously with the execution of this agreement and the first party by his signature to this agreement acknowledges receipt of the written cancellation and satisfaction of said indebtedness duly executed by said Abbot Kinney Company in full payment for such transfer and assignment.

O.K. T. K.
S. K.

3. \$19,100.00 of said \$51,000.00 is to be paid by cancellation of the indebtedness of first party to Clan Kinney and Helen Kinney Gerety now amounting to \$19,100.00 in return for the transfer and assignment by first party to Clan Kinney and Helen Kinney Gerety of such part of first party's said beneficial interest in said trust and in the said stock of Abbot Kinney Company as \$19,100.00 bears to \$133,000.00, to wit, $\frac{191}{1,330}$ part thereof. Such transfer [34] and assignment is to be executed contemporaneously with the execution of this agreement and the first party by his signature to this agreement acknowledges receipt of the written cancellation and satisfaction of said indebtedness duly executed by said Clan Kinney and Helen Kinney

Gerety in full payment for such transfer and assignment.

4. \$1,000.00 of said \$51,000.00 is to be paid by cancellation by second party of the sum of \$1,000.00 which first party agreed to pay second party for assuming first party's portion of the mortgage indebtedness upon what the parties hereto know as the 16 Park Avenue Property in Venice, California. Second party by his signature to this agreement assumes and agrees to pay first party's portion of said mortgage indebtedness. Contemporaneously with the execution of this agreement first party agrees to transfer and assign to second party $\frac{1}{133}$ part of said

beneficial interest of first party in said trust and in the said stock of said Abbot Kinney Company, and second party hereby acknowledges receipt of such transfer and assignment. Second party, by his signature to this instrument, cancels, and acknowledges full satisfaction of, his claim against first party for said \$1,000.00 in this paragraph referred to.

O.K. T. K.
S. K.

5. The balance of said \$51,000.00, to wit, \$11,511.14, has been, or is to be, paid by second party to first party as follows: \$500.00 on July 1, 1930, and \$11,011.14 contemporaneously with the execution of this agreement, the receipt of which is hereby acknowledged by first party. In considera- [35]
tion of said payment of \$11,511.14 to first party by second party, first party agrees, contemporaneously

with the execution of this agreement, to transfer and assign to second party such portion of his said beneficial interest in said trust and in the stock of Abbot Kinney Company as \$11,511.14 bears to \$133,000.00, to wit, $\frac{1,151,114}{13,300,000}$ part thereof, and second party by his signature to this instrument acknowledges receipt of such transfer and assignment.

6. The balance of the purchase price, to wit, \$82,000.00, together with interest thereon from July 1, 1930 at 5% per annum on all portions of said \$82,000.00 remaining from time to time unpaid, is payable, and second party agrees to pay same, in monthly installments of \$600.00 per month including interest, as follows: The first installment of \$600.00 was paid on July 1, 1930, and receipt thereof is hereby acknowledged, and subsequent installments are payable on the first day of each and every subsequent month subject to the conditions and limitations hereinafter set forth. All payments are to be credited first to unpaid accrued and earned interest and the remainder thereof to principal. It is expressly understood and agreed that if, while second party is an officer or director of Abbot Kinney Company and holds not less than the amount of stock in the Abbot Kinney Company which he now owns

O.K. T. K.

S. K.

directly or indirectly, Abbot Kinney Company suspends or reduces the monthly payments now being made to second party so that the total amount re-

ceived by second party from Abbot Kinney Company and/or its subsidiaries, from all sources (now aggregating \$925.00 per month) is reduced below \$925.00 per month, then during the period that the aggregate [36] of said items is below \$925.00 per month the said monthly payments of \$600.00 are also to be reduced in the same proportion; provided, however, that if and while said monthly payments to second party aggregate less than \$500.00 per month, all monthly payments can be suspended by party at the option of second party. In such event and should such suspension continue for sixty (60) days and second party not make payments of at least \$330.00 per month to first party, then either party hereto may terminate this contract by giving a similar thirty-day notice to that provided in paragraph 10 hereof, and with like effect. Anything herein to the contrary notwithstanding, no suspension or reduction can be made by second party in the \$600.00 monthly installments in this agreement provided for prior to January 1, 1931, and notwithstanding anything herein contained to the contrary, if and while the monthly salary of Jack Gerety from the Abbot Kinney Company and/or its subsidiaries is above the sum of \$325.00 per month in the aggregate or the salary of Edward Gerety, Jr., from Abbott Kinney Company or its subsidiaries is above the sum of \$350.00 per month in the aggregate, the monthly installments of \$600.00 hereinabove provided for cannot be suspended or reduced.

O.K. T. K.
S. K.

7. Contemporaneously with the execution of this agreement, first party agrees to assign and transfer unto Asa V. Call, of Los Angeles, California, as trustee, $\frac{82}{133}$ portion of his beneficial interest in said trust and in the said stock of Abbot Kinney Company (being the proportion of his interest therein that the sum of \$82,000.00 bears to \$133,000.00, together with any and all shares of the capital stock of Abbot Kinney Company standing in the name of first party or owned by first party, to be held by said Asa V. Call upon the following uses and trusts: To manage the same for the mutual protection [37] of the interests of first party and of second party under this agreement, and with full and irrevocable power and authority to make assignments, transfers and deliveries of such portion of the beneficial interest of first party in said trust and in the said stock of Abbot Kinney Company as second party may become entitled to from time to time under the terms of this agreement; to collect and receipt for all dividends and the rents, issues and profits of said beneficial interest or such portion thereof as remains in the hands of said trustee from time to time, and to disburse and apply the same as herein provided. Upon the termination of the trust under said declaration of trust dated October 28, 1918, executed by Abbot Kinney, to receipt for such portion of the trust estate held under said trust as first party may be entitled to thereunder at said

time, which he shall hold under the trusts and for the uses and purposes specified herein; to execute such consents, receipts and any and all other instruments as may in the opinion of said trustee become necessary; to vote and/or instruct the trustees under said trust dated October 28, 1918, executed by Abbot Kinney in the manner that second party may request the said Asa V. Call as trustee to do, but not inconsistent with the provisions of this agreement;

O.K. T.K. S.K.

upon the termination of this trust, to transfer and
O.K. T. K.

S. K.

assign to second party such portion of the trust estate held by said Asa V. Call as trustee as second party may then be entitled to under the provisions of this agreement, and to transfer the remainder unto first party; to exercise any and all other powers which the said Asa V. Call as trustee shall deem necessary for the protection of [38] the rights and interests of first party and of second party not inconsistent with the provisions of this agreement and/or any modifications or changes hereof. Said trustee shall be entitled to any costs and expenses of said trustee in administering said trust, which shall be a first lien and charge upon the trust estate in the hands of said trustee and to be paid from time to time with moneys available in said trust. The trustee may resign at any time by written notice to both first party and second party. The trustee may be removed only by the joint action of

first party and second party executed in writing and delivered to said trustee. Upon the resignation of said trustee or the death of said trustee or the removal of said trustee, a new trustee may be appointed in writing by the joint action of first party and second party executed in writing; provided, however, that if the parties hereto are unable to agree upon such new trustee within a period of ten days, such new trustee shall be designated by the person who is then presiding judge of the superior court of Los Angeles County, California, upon the application of any interested party. Such new trustee shall be vested with all the powers and duties and with the property rights herein granted to said Asa V. Call as trustee. Said Asa V. Call as trustee, O.K. T. K.

S. K.

and any successor trustee, shall turn over all portions of the trust estate then remaining in his hands or constituting a part of the trust estate to such new trustee, whereupon, and not before, he shall be released and discharged as trustee hereunder. The provision hereof shall apply to each successor trustee. [39]

8. At the end of each six months' period, to wit, on January 1st and July 1st of each year during the life of this agreement, it is expressly understood and agreed that second party shall be entitled to receive and have transferred and assigned to him by the trustee referred to in the preceding paragraph such portion of the present beneficial interest

of first party in the trust created by Abbot Kinney as the aggregate of the payments upon principal resulting from the monthly installments paid on said date and during the preceding six months bears to the sum of \$133,000.00, together with such portion of the stock of Abbot Kinney Company not constituting a part of the trust estate as now stands in the name of or is owned by first party as the aggregate of such payments upon principal bears to the sum of \$82,000.00, and the trustee named in the preceding paragraph is hereby irrevocably authorized and instructed to execute such transfers and assignments from time to time as second party becomes entitled thereto under the provisions of this agreement.

9. Second party shall be entitled to receive any and all dividends upon and the rents, issues and profits of, the beneficial interest of first party in said trust and in said stock of Abbot Kinney Company as may be assigned to said trustee as hereinafter provided which may be declared or accrue subsequent to July 1, 1930, during the life of this agreement.

O.K. T. K.

S. K.

10. In the event that second party shall fail to pay any installment which he is obligated to pay under the terms and conditions hereof and such failure shall continue for a period of thirty days after written notice from first party to second party, first party may, at the option of first party, by written notice to second party and to the trustee named in paragraph 7 hereof, cancel this agreement

as to unpaid-for stock or beneficial interest, in which event second [40] party shall be entitled to

OK. T. K.

S.K.

receive such portion of the said beneficial interest of first party in said trust and in the stock of Abbot Kinney Company as the total of the principal of the purchase price then paid by second party hereunder bears to the sum of \$133,000.00 (excluding, of course, such portion thereof as second party may already have received), and second party shall forfeit all interest in the remainder of said beneficial interest and this contract shall thereupon cease and determine.

11. In the event of the death of second party during the life of this agreement the executor and/or administrator of his estate may, within the period of three months after the date of death of second party, terminate this agreement by securing, within said three months' period, an order of the court having jurisdiction over the probate proceedings of the estate of second party authorizing such action and serving notice of such termination upon first party, in which event the estate of second party shall be entitled to receive such portion of the said beneficial interest of first party in said trust and in the stock of Abbot Kinney Company as the total of the principal of the purchase price paid by second party hereunder bears to the sum of \$133,000.00

O.K. T. K.

S. K.

(excluding, of course, such portion of the beneficial

interest of first party in said estate and in the stock of Abbot Kinney Company as theretofore has been assigned and transferred by first party to second party.

12. First party agrees to deliver to second party contemporaneously with the execution of this agreement his [41] written resignation as a director and officer of Abbot Kinney Company and of all its subsidiary companies, including Venice Hotel Corporation, in which first party may be a director and/or an officer, together with his written resignation as a trustee under the said trust created by Abbot Kinney under date of October 28, 1918, hereinbefore referred to, and as trustee under any other trusts in which the parties hereto may be interested, which second party is hereby irrevocably authorized to present and have immediately accepted. First party also agrees to deliver to second party contemporaneously with the execution of this agreement a written release, cancellation and discharge of any and all other agreements between first and second parties or in which first and second parties are parties executed prior to July 1, 1930. Nothing in this paragraph contained is intended to affect the interests of the parties hereto in Western Feeding Company.

13. Subject to the limitations and conditions herein contained, this agreement shall be binding upon the heirs, executors, administrators and assigns of the respective parties hereto.

In witness whereof, the parties hereto have executed this agreement in triplicate original as of the

day, month and year herein first above written, each party hereto retaining one original and the third original being deposited with Mr. Asa V. Call as trustee.

THORNTON KINNEY,
SHERWOOD KINNEY.

I hereby accept the trusts provided for in para-
[42] graph 7 hereof, this 5th day of August, 1930.

ASA V. CALL.

For a valuable consideration, receipt of which is hereby acknowledged, I hereby sell, assign and transfer to and deposit with the BANK OF AMERICA National Trust and Savings Association, all of my right, title and interest in and to the foregoing and within contract, declaration of Trust, and the property therein described.

Dated November 30th, 1930.

THORNTON KINNEY.

[Endorsed]: United States Board of Tax Appeals, Sep 18, 1930. [43]

United States Board of Tax Appeals

Estate of Winifred H. Kinney, Petitioner, v. Commissioner of Internal Revenue, Respondent
Docket No. 49582. Promulgated May 1, 1934.

A testator directed that certain securities should be held in trust for a period of 12 years after his death, with the income payable to his widow and children, in proportions named, during their respective lives. At the termination of the trust, the will provided that title to the whole of the property should immediately vest in the beneficiaries, in proportions indicated, by title absolute. Should all beneficiaries die before termination of the trust, its corpus was directed to be distributed among certain grandchildren of testator. Held, at testator's death the widow took an immediate vested remainder interest in the corpus of the trust, which interest was properly invoiced as an asset of her estate at her death, which occurred before termination of the trust. In *Re Fair's Estate*, 122 Cal. 523; 60 Pac. 442.

R. C. Gortner, for the petitioner.

T. M. Mather, Esq., for the respondent.

OPINION

Lansdon: The respondent has determined a deficiency in estate tax in the amount of \$3,968.07.

Two questions are involved, viz., (1) Whether the decedent at date of death had a vested interest in one-ninth of the corpus of a certain trust, and (2) the value of such interest at that date. The parties have filed a stipulation which the Board accepts. The material facts so agreed to may be summarized as follows:

Winifred H. Kinney, the decedent, died testate on December 6, 1927. This appeal is prosecuted by Sherwood Kinney and R. C. Gortner, as executors, both living in Los Angeles, California.

On October 28, 1918, Abbot Kinney, husband of the decedent, executed a trust indenture which included the following:

That Abbot Kinney of Los Angeles County, California, herein designated the trustee, does hereby covenant and declare that he has and holds the title to the following described property in trust for the uses and purposes hereinafter expressed, to-wit:

All shares of stock owned by and all shares outstanding in the name of Abbot Kinney on the books of the company in the Abbot Kinney Company, a corporation, organized under the laws of California, and which said title and [44] ownership of shares includes all shares heretofore issued by said company, except three (3) shares.

That said trustee shall have the power to sell, transfer, convey and mortgage all or any of said property, and to receive the rents and profits from said property, and as incidental thereto to manage said property and vote all shares of stock, and to

pay and apply said rents and profits for the support and maintenance of the following named persons, in the proportions hereinafter stated, to-wit:

To Thornton Kinney one-sixth ($1/6$); to Sherwood Kinney one-sixth ($1/6$); to Innes Kinney one-sixth ($1/6$); to Carleton Kinney one-sixth ($1/6$); to Winifred H. Kinney for the support and maintenance of herself, and for the support and maintenance of the two minor children of Abbott Kinney, to-wit: Helen Kinney and Clan Kinney, to be controlled and applied by said *Wilfred H. Kinney*, one-third ($1/3$); provided, however, that during the life of Abbot Kinney, trustee above named, he shall act as the sole trustee under this declaration of trust, and he being the sole trustor and maker of this trust shall have the power to revoke this trust at any time during his lifetime, and during his life time he reserves and shall have the right to receive and to apply one-half of all the rents, income and profits from the property above described for his sole use as he may determine. In case of the death, absence or inability to act, of said Abbot Kinney, trustee, such vacancy shall be filled by a board of directors composed of the following named persons, by proper transfers and declarations of trust; Thornton Kinney; Winifred H. Kinney; Sherwood Kinney, Innes Kinney and Carleton Kinney, and in case of death, absence or inability to act of either or any of said five, then such vacancy shall be filled by Clan Kinney and Helen Kinney, in the order named, and all such trustees, in turn, shall have and be pos-

essed of all the power under this trust hereinbefore mentioned.

* * * * *

Upon the termination of this trust, unless revoked, the title to the whole of said property, so held in trust, shall immediately vest in the above named beneficiaries by title absolute, in the same proportions above named for rents and profits and the said one-third (1/3) above set forth for the support of Winifred H. Kinney, Helen Kinney and Clan Kinney, will pass to them in equal shares by absolute title.

* * * * *

Winifred H. Kinney, wife of said Abbot Kinney, hereby joins in this instrument, and hereby declares that all of said property transferred in trust as aforesaid is the separate property and estate of said Abbot Kinney, subject to his disposition and control, and hereby renounces all claims to said property as community property or otherwise, and sets the same apart as the sole property and estate of said Abbot Kinney.

Abbot Kinney died in November, 1920. The decedent bequeathed her interest in the trust to her two children, Clan Kinney and Helen Kinney Gerety. The other beneficiaries of the trust were children of the trustor by a previous marriage.

The net worth of the Abbot Kinney Co. on December 6, 1927, as reflected by the book values of its assets, was \$1,814,103.93, and on June 30, 1920, was \$1,438,016.60. On July 1, 1930, Innes Kinney sold

a one-sixth beneficial interest in the trust to Carleton Kinney for [45] \$133,000. On August 5, 1930, Thornton Kinney sold a one-sixth beneficial interest in the trust to Sherwood Kinney for \$133,000.

It is stipulated that if called as witnesses, C. C. Hogan, trust officer, Security First National Bank of Los Angeles, would testify that in his opinion Mrs. Kinney could not have sold her interest in the trust for more than 50 per cent of the pro rata value of the capital stock of the corporation in 1927; that W. D. Newcomb, Jr., president of the First National Bank of Venice, California, would testify that the fair market value of Mrs. Kinney's interest in the trust in 1927 was not in excess of 25 per cent of the fractional worth of the corporation; and that Herbert Hertel, manager of the Venice Branch of the Security First National Bank of Los Angeles, would testify that in his opinion Mrs. Kinney's beneficial interest was worth 33-1/3 per cent of the fractional net worth of the corporation's assets in 1927.

On the question whether or not the decedent at the time of her death owned a vested interest in the corpus of the trust, we must sustain the contentions of the respondent.

Construing the trust instrument from its four corners, it is clear that it created an executed trust which gave to the beneficiaries not only the income from the trust estate during its life, but a vested

interest as remaindermen in the corpus, which became absolute at its termination. In *Re Fair's Estate*, 122 Cal. 523; 60 Pac. 442; *Nobel v. Leonard*, 153 Cal. 245; 94 Pac. 1047; *Nichol v. Emery*, 109 Cal. 323; 41 Pac. 1089.

The petitioner argues that because the language of the trust instrument provides that upon termination of the trust the title to the whole of the property "shall immediately vest" in the beneficiaries by title absolute, no title could vest in the beneficiaries until such time. It is obvious that in taking this position the petitioner has confused the decedent's title to a vested remainder in the corpus of the trust with that of title absolute in the whole property after exhaustion of the trust. The remaindermen and the "particular estate" (trust estate here) are separate species of property, complement, however, to each other and created at the same time and by the same instrument. The title to both passed out of the owner at the time he created the trust; one going to the trustees, and the other to the remaindermen, they being in esse at the time. 23 R. C. D. 492; *Doe v. Considine*, 6 Wall. 458; *Anderson v. Messinger*, 146 Fed. 929; *Bunting v. Speck*, 21 Pac. 288.

The corpus of the trust here considered consisted of the capital stock of the *Abbot Kinney Co.*, and in determining the value of the decedent's interest in it at the time of her death respondent took as his base the agreed net worth of that company's assets on that date and divided it by nine. The

petitioner contends that in no event [46] could the value of that interest have been equal to a one-ninth part of such net worth, because of the fact that possession and control were in the trustees, and seeks to establish the fair market value of such interest at the date of decedent's death by showing sales made by two cobeneficiaries of their respective interests in the trust on or about June 30, 1930.

The alleged sales of interests, so referred to, being more than two years and six months after decedent's death (December 6, 1927), are too remote in point of time to serve as a guide in determining values on the basic date. A review of the sale agreements also shows that they were not cash sales, but mere contracts in which credits and washing out of accumulated advances formed the major part of the considerations involved. They, therefore, furnish us no useful guide in this inquiry and will be disregarded.

The parties have agreed what certain bank officials, if present, would testify respecting their individual opinion of decedent's interest, expressed in percentages of and comparisons to the corporation's assets. One opinion, so put into the record, suggests that decedent's interest could not have been sold for more than 50 per cent of the pro rata of one ninth of the corporation's capital stock in 1927. Another is that the value of that interest was not in excess of 25 per cent of the corporation's net worth; and the other that the interest was worth $33\frac{1}{3}$

per cent of the net worth of the corporation's interest in 1927.

It is obvious that these vague opinions in no sense constitute proof, and, even as arguments, they assign no reasons for the positions assumed. The first two are negative in character and attempt to say what price the decedent's interest could not have been sold for on the basic date, and the other what that interest's relative value was compared to the corporation's net assets. These opinions, like the alleged sales hereinbefore mentioned, are not evidence, and we merely refer to them in this opinion to indicate the extent to which the petitioner has failed in giving us any proof to show that the respondent erred in his determination of the value of a one ninth interest in the trust in the amount of \$201,567.10. *Warren M. Horner*, 5 B. T. A. 974; *Wm. A. Pringle et al., Executors*, 6 B. T. A. 299; *English & Scottish Law Life Assurance Assn.*, 10 B. T. A. 454; *G. S. Patterson*, 17 B. T. A. 716.

Decision will be entered for the respondent.

[Seal] Board of Tax Appeals. [47]

United States Board of Tax Appeals
Washington

Docket No. 49582

ESTATE OF WINIFRED H. KINNEY,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Board, as set forth in its report promulgated May 1, 1934, it is

Ordered and Decided: That there is a deficiency in estate tax in the amount of \$3,968.07.

[Seal] (Signed) W. G. LANSDON,
Member. [48]

[Endorsed]: Entered May 5, 1934.

[Title of Court and Cause.]

PETITION FOR REVIEW.

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Sherwood Kinney as Executor of, and Helen Kinney Gerety as Administratrix with the Will Annexed of, the Estate of Winifred H. Kinney, deceased, present their petition on behalf of the Estate of Winifred H. Kinney, deceased, and file the same in pursuance of the provisions of Section 1001 of the Act of Congress approved February 26, 1926, entitled, "The Revenue Act of 1926", and the acts

amendatory thereof and supplemental thereto, for the review of the decision of the United States Board of Tax Appeals promulgated on May 1st, 1934 and entered on May 5th, 1934, approving a deficiency in estate tax of the Estate of Winifred H. Kinney, deceased, [49] in the amount of thirty-nine hundred and sixty-eight and 7/100ths dollars (\$3968.07), and respectfully show to this Honorable Court as follows:

I.

The nature of the controversy is as follows:

The controversy arises out of the construction of a certain Trust Indenture executed by Abbot Kinney, husband of the decedent, in 1918, and also the method used in fixing the value of decedent's interest thereunder.

In the document referred to, the said Abbot Kinney designated himself as trustee, and declared that he held title as trustee for certain purposes therein set forth, to all of the shares of stock of Abbot Kinney Company, a corporation, standing in his name. He retained power to revoke said trust during his lifetime. As such trustee he had power to sell and convey, receive the rents and profits, vote the shares of stock, and "to pay and apply said rents and profits for the support and maintenance of" his wife, Winifred H. Kinney, and certain children of the deceased, named in said document.

No other person was a party to the Declaration of Trust except Abbot Kinney and his wife Winifred H. Kinney, who joined in the same and de-

clared the property of the trust was his separate property.

The trust provided that it should last for a [50] period of twelve years after the death of Abbot Kinney, and that, upon its termination, the title to the whole property should immediately vest in the named beneficiaries by title absolute, in the same proportions as they were to receive the rents and profits.

The trust was never revoked during Abbot Kinney's lifetime.

The trust contained no express provision for distribution of the property except as hereinabove stated.

Abbot Kinney died in November, 1920; Winifred H. Kinney died December 6th, 1927; consequently, the twelve year period expired after the death of Winifred H. Kinney.

The Commissioner held that, at Abbot Kinney's death, the widow took an immediate vested remainder in the corpus, and the Commissioner fixed the value of the same on the basis of the book value of the stock of the corporation, without taking into consideration the fact that, at said date, the stock was still held in trust, and the Estate of Winifred H. Kinney had no right to vote the stock or exercise any control over it other than to accept the dividends.

The Executors, on behalf of the said Estate, contended that, under the peculiar wording of the trust agreement, no title vested until the termination of

the trust, and therefore that no title at all vested in the estate of Winifred H. Kinney which was taxable. [51] They also contended that if any title did vest which was taxable, the method of fixing the value of the stock used by the Commissioner was erroneous, and the amount of tax therefore excessive.

II.

DESIGNATION OF COURT OF REVIEW.

The petitioners are respectively Executor and Administratrix with Will Annexed of the said Estate of Winifred H. Kinney, deceased, and are both residents of Los Angeles County, California, of which County the said deceased died a resident.

The proceedings for the probate of the said estate are pending in the Superior Court of the State of California, in and for the said County of Los Angeles, and the petitioners, being aggrieved by the findings of fact, opinion, decision and order, seek a review thereof in accordance with the provisions of the Revenue Act of 1926 and Acts amendatory thereof and supplemental thereto by the United States Circuit Court of Appeals for the Ninth Circuit, within which Circuit is located the office of the Collector of Internal Revenue at Los Angeles, with whom petitioners made and filed their returns of Federal Estate taxes.

III.

ASSIGNMENTS OF ERRORS.

Petitioners, as a basis for review, make the following assignments of errors: [52]

First: That the said United States Board of Tax Appeals erred in deciding that, at the date of her death, the deceased, Winifred H. Kinney, had a vested interest in the corpus of a certain trust made by Abbot Kinney in his lifetime.

Second: The United States Board of Tax Appeals erred in deciding that the trust agreement created an executed trust which gave to the beneficiaries not only the income from the trust estate during its life, but a vested interest as remaindermen in the corpus which became absolute at its termination.

Third: That the United States Board of Tax Appeals erred in approving the fixing of the value of decedent's interest in the trust as the agreed net worth of the Abbot Kinney Company's assets on the date of death and dividing it by nine.

Fourth: That the United States Board of Tax Appeals erred in holding that the sale of interests in the trust two years and six months after the decedent's death was too remote in point of time to serve as a guide in determining values on the basic date.

Fifth: That the United States Board of Tax Appeals erred in disregarding said sale in the fixing of the value of decedent's alleged interest.

Sixth: That the United States Board of Tax Appeals erred in disregarding the testimony of certain [53] bank officials which was stipulated to, as to the value of decedent's interest in the trust estate.

Wherefore, your petitioners pray that this Honorable Court may review such findings, decree, opinion and order, and reverse and set aside the same, and that the Clerk of the United States Board of Tax Appeals be directed to transmit and deliver to the Clerk of this Court certified copies of all and every of the documents necessary and material to the presentation and consideration of the foregoing Petition for Review, and as required by the rules of the said court and the statutes made and provided.

SHERWOOD KINNEY,
Executor of the Estate of Winifred H. Kinney, Deceased.
HELEN KINNEY GERETY,
Administratrix with Will Annexed
of the Estate of Winifred H.
Kinney, Deceased.

R. C. GORTNER,
Attorney for Petitioner
Sherwood Kinney, Executor.

HAROLD J. CASHIN,
Attorney for Petitioner
Helen Kinney Gerety,
Administratrix with the
Will Annexed. [54]

State of California,
County of Los Angeles.—ss.

R. C. GORTNER, being first duly sworn, deposes and says:

That he is the attorney for Sherwood Kinney, one of the petitioners herein, and, as such, is duly authorized to verify the petition for review by the *United States Court of Appeals* in the Ninth Circuit of the decision in the above entitled case.

That he has read the said petition and is familiar with the contents thereof, and that the facts therein stated are true except such facts as may be stated on information and belief, and those facts he believes to be true.

R. C. GORTNER

Subscribed and sworn to before me this 27 day of July, 1934.

[Seal]

ROBERT MARCUM,

Notary Public in and for said County and State.

My Commission expires February 26, 1938.

[Endorsed]: United States Board of Tax Appeals.
Filed Jul. 30, 1934. [55]

State of California,
County of Los Angeles—ss.

HAROLD J. CASHIN, being first duly sworn, deposes and says:

That he is the attorney for Helen Kinney Gerety, one of the petitioners herein, and, as such, is duly

authorized to verify the petition for review by the United States Court of Appeals of the Ninth Circuit of the decision in the above entitled case.

That he has read the said petition, and is familiar with the contents thereof, and that the facts therein stated are true except such facts as may be stated on information and belief, and those facts he believes to be true.

HAROLD J. CASHIN.

Subscribed and sworn to before me this 27th day of July, 1934.

[Seal] GLADYS GILKS,
Notary Public in and for said County and State.

My Commission expires Nov. 19, 1934.

[Endorsed]: United States Board of Tax Appeals.
Filed Jul. 30, 1934. [56]

[Title of Court and Cause.]

NOTICE OF FILING OF PETITION
FOR REVIEW.

To Robert H. Jackson, General Counsel Bureau of Internal Revenue, Washington, D. C., Attorney for Respondent Commissioner of Internal Revenue:

Please take notice that the undersigned did, on the day of July, 1934, file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a Petition for Review by the United States Circuit Court of Appeals for the Ninth Cir-

cuit, of the decision of the Board heretofore rendered in the above entitled case.

A copy of the Petition for Review and the Assignments of Errors as filed is hereto attached and served upon you. [57]

Dated: this day of July, 1934.

R. C. GORTNER,
Attorney for Petitioner
Sherwood Kinney, Executor.
HAROLD J. CASHIN,
Attorney for Petitioner Helen
Kinney Gerety, Administra-
trix with the Will Annexed.

Copy of the above Notice and copy of the Petition for Review is hereby accepted this 20th day of Aug., 1934.

(Sgd) ROBERT H. JACKSON,
General Counsel Bureau
of Internal Revenue. [58]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.
To the Clerk of the United States Board of Tax
Appeals, Washington, D. C.

You are hereby requested to make a transcript of the record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit pursuant to a petition for review filed in the above entitled court, and to include in such transcript of record the following and no other papers and exhibits, to-wit:

1. Petition to the board filed July 16, 1930.
2. Amended petition filed September 5, 1930.

3. Answer of respondent filed October 28, 1930.
4. Stipulation of facts, with exhibits A and B attached, filed September 18, 1933.
5. Opinion of the board promulgated May 1, 1934, and decision finding a deficiency of \$3968.07 entered May 5, 1934. [59]
6. Petition for Review filed July 30, 1934.
7. Notice of filing Petition for Review, together with proof of service of said note and petition.
8. The docket entries of all proceedings before the Board of Tax Appeals.
9. This praecipe and service thereon.

Said transcript to be prepared as required by law and the requirements of the Board of Tax Appeals and the requirements of the United States Circuit Court of Appeals for the Ninth Circuit, and to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco.

Dated: August 31st, 1934.

(Sgd) R. C. GORTNER,
Attorney for Sherwood Kinney,
Executor of the Estate of
Winifred H. Kinney, Deed.
(Sgd) HAROLD J. CASHIN,
Attorney for Helen Kinney
Gerety, Administratrix with
Will Annexed of the Estate of
Winifred H. Kinney, Deceased.

Service of the above praecipe accepted and acknowledged this 4th day of September, 1934.

ROBERT H. JACKSON,
Assistant General Counsel for the
Bureau of Internal Revenue.

[Endorsed]: United States Board of Tax Appeals.
Filed Sept. 7, 1934. [60]

[Title of Court and Cause.]

CERTIFICATE.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 60, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 27th day of September, 1934.

[Seal]

B. D. GAMBLE,
Clerk, United States Board of Tax Appeals.

[Endorsed]: No. 7639. United States Circuit Court of Appeals for the Ninth Circuit. Estate of Winifred H. Kinney, Deceased, by Sherwood Kinney and R. C. Gortner, Executors, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed October 8, 1934.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals,
for the Ninth Circuit.

